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**In the Supreme Court
of the United States**

OCTOBER TERM, 1962

No. ~~100~~ 82

**ITALIA SOCIETA PER AZIONI DI
NAVIGAZIONE,**

Petitioner,

v.

OREGON STEVEDORING COMPANY, INC.,
Respondent.

**PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

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February 25, 1963

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Petitioner prays for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in the above entitled case on October 25, 1962, as to which rehearing was denied December 5, 1962.

OPINIONS OF COURTS BELOW

The opinion of the United States District Court for the District of Oregon is not reported. It is set forth at pages 21-23 of the printed Transcript of Record.

The opinion of the Court of Appeals, contained in the Transcript of Record, pp. 44-54, is printed in the Appendix hereto, *infra*, pp. 11-25, and is reported in 310 F. 2d 481-488; and the dissenting opinion, Transcript pp. 54-63, is printed in the Appendix, *infra* pp. 25-37, and reported in 310 F. 2d 488-493.

JURISDICTION

The judgment of the Court of Appeals was entered October 25, 1962 (Tr. 64) (Appendix p. 38). A timely petition for rehearing was filed November 23, 1962, and was denied, with dissent, December 5, 1962 (Tr. 65). This petition for a writ of certiorari is filed less than 90 days after denial of the rehearing petition.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1. Does the implied warranty of workmanlike service, owed by a contracting stevedore to its shipowner customer, which this Court has likened "to a manufacturer's warranty of the soundness of its manufactured product," include the warranty that equipment furnished and brought aboard the vessel by the stevedore for its own use in the stevedoring operations, shall be reasonably fit and suitable for the purpose intended, and free of latent defect?

¹ *Ryan Stevedore Co. v. Pan Atlantic S.S. Corp.*, 350 U.S. 124 at pp. 133-34; *Crumady v. The J. H. Fisser*, 358 U.S. 423 at pp. 428-29; *Waterman S.S. Corp. v. Dugan & McNamara*, 364 U.S. 421 at p. 424.

2. What is the extent of a contracting stevedore's obligation to its shipowner customer with respect to equipment which the stevedore furnishes, brings aboard the vessel, and retains in its exclusive possession and control, for use in performance of its stevedoring services? Is it a duty to provide seaworthy equipment suitable for the use intended, or merely to avoid negligence?

3. Does a shipowner, who has been subjected to liability for injury to a longshoreman employee of the contracting stevedore, as a result of the stevedore furnishing and using equipment unsuitable because of latent defect, have a right to indemnity from the contracting stevedore?

STATEMENT OF THE CASE

Respondent, Oregon Stevedoring Company, performed stevedoring services on petitioner's vessel, the MS ANTONIO PACINOTTI, in the harbor of Portland, Oregon on November 19, 1958. The work was done pursuant to a written stevedoring contract which required the stevedore to furnish all necessary labor and supervision and all ordinary gear for the performance of the stevedoring services. (Tr. 23a). For use in the stevedoring operations, the stevedore furnished and brought aboard the vessel a tent to protect cargo from rain, with attached tie ropes. The tent and attached tie ropes were owned, supplied, rigged, and at all times exclusively controlled by the stevedore.

During the work of rigging the tent, done by the

stevedoring company as a part of its stevedoring services, while one Griffith, a longshoreman employee of the stevedoring company, was pulling on a tie-down rope, the rope broke, resulting in injury to Griffith. The rope broke because it was defective and unfit for the purpose intended (Tr. 25). It was of proper size, and should have been able to withstand a far greater pull than that which was being exerted at the time it broke. The defect was not visible, but latent, and there was no proof of negligence on the part of the stevedoring company.

Griffith sued petitioner shipowner in the State Court, and recovered a judgment which petitioner paid. Petitioner shipowner then brought suit for indemnity against respondent, the contracting stevedore, in the United States District Court for the District of Oregon, in admiralty, based upon the stevedoring contract, a maritime contract.² The District Court had original jurisdiction in admiralty pursuant to Title 28 U.S.C. § 1333(1). The District Court's Findings of Fact, summarized above, are set forth in full in the printed Transcript, pp. 23-26, and its Decree dismissed the libel. The Court of Appeals, which had jurisdiction pursuant to Title 28 U.S.C. § 1291, affirmed, in a decision by Judges Barnes and Hamlin, holding that the stevedore's liability upon its warranty was merely co-extensive with liability for negligence, and did not include a warranty against latent defects in equipment furnished and brought aboard the vessel by the stevedore. Judge Jertberg dissented, agreeing with the decision of the Court

² *American Stevedores v. Porello*, 330 U.S. 446, 456.

of Appeals for the Second Circuit, in *Booth S.S. Co. v. Meier & Oelhaef Co.*, 262 F. 2d 310 (1958), that the contractor's implied warranty is breached by furnishing defective equipment regardless of negligence.

REASONS FOR GRANTING THE WRIT

1. Importance of the Question.

In a series of recent cases this Court has ruled upon various aspects of the implied warranty of workman-like service owed by the contracting stevedore to the owner of the vessel on which the stevedore performs its services. *Ryan Stevedore Co. v. Pan Atlantic S.S. Corp.*, 350 U.S. 124 (1956); *Weyerhaeuser S.S. Co. v. Nacirema Co.*, 355 U.S. 563 (1958); *Crumady v. The J. H. Fisser*, 358 U.S. 423 (1959); *Waterman S.S. Corp. v. Dugan & McNamara*, 364 U.S. 421 (1960). But the question involved in the present case has not heretofore been presented to this Court.

Under modern conditions in the industry, stevedore contractors bring aboard the vessel a large amount of their own equipment, such as cargo hooks, shackles, blocks, slings, cables, pallet boards, stowing winches, tractors, bulldozers, dollies, hand trucks, rain tents, and associated gear. As to all this stevedore-supplied gear, used in loading or discharging cargo, the shipowner is held to an absolute warranty of seaworthiness, and is liable to longshoremen employees of the stevedore who may be injured through latent defect in the gear. *Seas Shipping Co. v. Sieracki*, 328 U.S. 86; *Alaska S.S. Co. v. Petterson*, 347 U.S. 396.

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It is therefore of great importance to the shipping industry for this Court to define the scope of stevedore responsibility to the shipowner for the condition of the stevedore-supplied gear.

2. Conflict in Decisions of Courts of Appeal.

There is a clear, express, and embarrassing conflict between the decision of the Court of Appeals for the Ninth Circuit in this case, and the decision of the Court of Appeals for the Second Circuit in *Booth S.S. Co. v. Meier & Oelhaf Co.*, 262 F. 2d 310 (1958).

In the *Booth* Case, the Court held that a shipyard contractor was liable to its shipowner customer for breach of implied warranty where the contractor supplied and brought aboard the vessel a defective wire strap which broke, causing injury to an employee of the contractor. The contractor was not negligent; the defect was latent. The shipowner was granted indemnity against the contractor for damages it had to pay the injured workman.

In the present case the majority opinion states:

"We consider *Booth* to be indistinguishable from this case on the ground urged or any other. Any distinction in kind is without legal significance. However, we find ourselves in disagreement with the result reached in *Booth* that non-negligent action can give rise to indemnity liability. Thus, we refuse to follow the *Second Circuit* on the point here involved." (Emphasis supplied) 310 F. 2d 484; App. hereto pp. 16-17.³

³ Judge Jertberg forcefully dissented, and would follow the reasoning and the result in the *Booth* case. 310 F. 2d 488-93; App. hereto pp. 25-37.

Thus, there exists an outright and embarrassing conflict between the Court of Appeals which establishes the law for the Pacific Coast, and the Court of Appeals which establishes the law for the largest maritime Circuit on the Atlantic Coast, in the field of maritime law where there should be substantial uniformity.

3. The Decision of the Court of Appeals is Inconsistent with Principles of Indemnity Announced by this Court.

It is true that the question presented is a novel one before this Court.

However, this Court has repeatedly stated that the stevedore's warranty of workmanlike service is "comparable to a manufacturer's warranty of the soundness of its manufactured product." *Ryan Stevedore Co. v. Pan Atlantic S.S. Co.*, *supra* at pp. 133-34; *Crumady v. The J. H. Fisser*, *supra* at pp. 428-29; *Waterman S.S. Corp. v. Dugan & McNamara*, *supra* at p. 424. But the Court of Appeals majority decision, after noting this language (310 F. 2d at p. 483, App. p. 14), apparently dismisses it, and becomes involved with semantics of the word "workmanlike," which it equates to "non-negligent." (310 F. 2d at pp. 484-85; App. pp. 17-18).

Therefore, the majority apparently conclude that this Court did not really mean that the stevedore's warranty was closely comparable to the manufacturer's warranty. They also overlook the possibility there may be closely related, but separate, warranties,—i.e., a warranty of skillful labor and supervision, and a warranty of soundness of materials and equipment furnished.

Likewise, the Court of Appeals majority opinion gives no apparent consideration to the implications of this Court's statement in *Waterman S.S. Corp. v. Dugan & McNamara* that:

"The ship and its owner are equally liable for a breach by the contractor of the owner's non-delegable duty to provide a seaworthy vessel. *The Osceola*, 189 U.S. 158, 175. Cf. *Continental Grain Co. v. The FBL-585*, 364 U.S. 19. The owner, no less than the ship, is the beneficiary of the stevedore's warranty of workmanlike service." 364 U.S. 421, at pp. 424-25.

It is well settled that the ship and its owner owe to the longshoreman employees of the stevedoring contractor the duty to provide a seaworthy vessel. *Sieracki*, *supra*. This duty is absolute and does not depend upon negligence, and extends to equipment brought aboard the vessel by the stevedore, over which the shipowner has no control. *Alaska S.S. Corp. v. Petterson*, *supra*. But, since this is true, and since the shipowner relies upon the expert stevedore, it would seem that the stevedore's warranty includes the absolute warranty to furnish equipment reasonably fit and suitable for the work at hand, and that this warranty is breached by furnishing equipment with a latent defect.

4. The Public Policy to Avoid Risk of Injury.

The Court of Appeals decision runs counter to the strong public policy to protect workmen from injury.

Stevedore work is hazardous. Stevedore-furnished equipment may be used to suspend heavy loads over the heads of workmen.

The shipowner has no control over stevedore-furnished equipment, nor opportunity to keep records as to its prior age and use, or to make tests beyond the call of duty of ordinary care, or otherwise to take such steps to prevent the use of defective equipment as might be taken by the stevedore.

The shipowner, vis-a-vis the injured longshoreman, is subject to absolute liability, upon the warranty of seaworthiness, and is therefore responsible for the result of latent dangers he cannot prevent. *Sieracki, supra; Alaska S.S. Co. v. Petterson*, 347 U.S. 396, 401.

But to protect longshoremen from injury (rather than merely compensate them for damages) the ultimate burden should be placed upon the party best able to eliminate the hazard,—namely, the stevedoring contractor. The Court of Appeals for the Second Circuit has given considerable emphasis to placing the ultimate liability, as between shipowner and stevedore, on the party best able to minimize the risk. This was an important consideration in the *Booth* decision. See 262 F. 2d at pp. 314-15. It was expressed again by a different panel of the Second Circuit in *DeGioia v. United States Lines Co.*, 304 F. 2d 421:

"The primary source of the shipowner's right to indemnity, as a practical matter, is his nondelegable duty to provide a seaworthy ship, by virtue of which he may be held vicariously liable for injuries caused by hazards which the longshoremen either created or had the primary responsibility or opportunity to eliminate or avoid. *Waterman S. S. Corp. v. Dugan & McNamara, Inc.*, *supra*, 364 U.S. 421, 424-425, 81 S. Ct. 200, 5 L. ed. 2d 169, Paliaga

v. Luckenbach S.S. Co., 2 Cir., 301 F. 2d 403, 408. The function of the doctrine of unseaworthiness and the corollary doctrine of indemnification is allocation of the losses caused by shipboard injuries to the enterprise, and within the several segments of the enterprise, to the institution or institutions most able to minimize the particular risk involved. . . . The scope of the stevedore's warranty of workmanlike performance is to be measured by the relationship which brings it into being." (pp. 425-26)

But the majority opinion of the Court of Appeals in the present case has apparently given no consideration to this allocation of risk, and the important public policy to protect the working longshoremen by minimizing the risk of injury so far as possible.

CONCLUSION

For the foregoing reasons, petitioner prays that this petition for writ of certiorari be granted.

Respectfully submitted,

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February 25, 1963.

APPENDIX

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUITItalia Societa Per Azioni di Navigazione,
Appellant,

va.

Oregon Stevedoring Company, Inc.,
*Appellee.*No. 17,616
Oct. 25, 1962Appeal from the United States District Court
for the District of Oregon.Before: BARNES, HAMLIN and JERTBERG, Circuit
Judges

HAMLIN, Circuit Judge:

Appellant, Italia Societa Per Azioni di Navigazione, a shipowner, contracted with the Oregon Stevedoring Company, Inc., appellee herein, for the performance of stevedoring services on appellant's ship, the M.S. Antonio Pacinotti. On or about November 19, 1958, during the course of stevedoring operations a longshoreman named Griffith, an employee of the stevedoring company, was injured due to a latently defective rope which had been brought onto the ship by the stevedoring company. Griffith recovered a judgment against appellant shipowner which it satisfied. Thereafter, in a separate action appellant shipowner brought suit against appellee stevedoring company claiming indemnity from appellee for the amount of the judgment which it had been required

to pay Griffith. Appellant based its claim for indemnity on the ground that the stevedoring company had been negligent and had breached its warranty of workmanlike service in supplying the defective rope. The stevedoring contract contained an express warranty whereby the stevedoring company undertook to indemnify the shipowner for negligence in the performance of its services.¹ The district court found that the stevedoring company had not been negligent in any way in bringing onto the ship the rope which caused injury to the longshoreman. The district court held that the presence of the express warranty covering negligence precluded any recovery for breach of an implied warranty of workmanlike service, in essence relying on the maxim *expressio unius est exclusio alterius* (expression of one thing is the exclusion of another). Judgment was entered for the stevedoring company and the shipowner appealed to this court which has jurisdiction pursuant to 28 U.S.C.A. § 1291.

No complaint is made on this appeal of the district court's finding that the stevedoring company was not negligent. Appellant contends merely that an implied warranty of workman-like service arose from the con-

¹ The express indemnity clause read:

The Stevedoring Company will be responsible for damage to the ship and its equipment, and for damage to cargo or loss of cargo overseas, and for injury or death of any person caused by its negligence, provided, however, when such damage occurs to the ship or its equipment, or where such damage or loss occurs to cargo, the ship's officers or other authorized representatives call the same to the attention of the Stevedoring Company at the time of occurrence. The Steamship Company shall be responsible for injury to or death of any person or for damage to or loss of property arising through the negligence of the Steamship Company or any of its agents or employees, or by reason of the failure of ship's gear and/or equipment.

tractual relationship between the parties which implied warranty placed a duty upon the stevedoring company to supply proper and seaworthy equipment. It is contended that a failure to supply seaworthy equipment is a breach of the implied warranty of workmanlike service which entitles the shipowner to indemnity for any liability it incurs resulting from the faulty equipment regardless of whether the stevedoring company was negligent in supplying the equipment. Assuming that there is an implied warranty which covers the facts of this case, the appellant shipowner argues that the mere presence of the express clause indemnifying for negligence does not preclude a recovery on the implied warranty. It will be unnecessary to consider the last contention if we determine that the warranty of workmanlike service does not include elements of liability without fault, i.e., that the stevedoring company absent negligence on its part does not warrant the suitability of the equipment which it supplies pursuant to its stevedoring contract.

We address ourselves, then, to the question whether a stevedoring company breaches its implied warranty of workmanlike service, which breach results in indemnity to the shipowner, when it supplies unseaworthy equipment to a ship on which it is to perform stevedoring services even though the stevedoring company has not been negligent in any way.

The leading case on indemnity liability for breach of the implied warranty of workmanlike service is *Ryan Stevedoring Co. v. Pan-Atlantic S.S. Corp.*, 350 U.S. 124 (1956). In that case a stevedoring company had agreed to perform stevedoring services and one of its employees

was injured during the unloading. A jury returned a verdict for the longshoreman against the shipowner. The shipowner had impleaded the stevedoring company claiming that it was entitled to full indemnity because the stevedoring company had negligently failed to stow the cargo in a safe and proper manner which negligence caused the shipowner to be liable to the longshoreman. The informal stevedoring contract made no reference to an express indemnity agreement. After rejecting the contention of the stevedoring company that indemnity was precluded by the provision in the Longshoremen's and Harbor Worker's Compensation Act which made a longshoreman's recovery of compensation his exclusive remedy against his employer,² the Court held that the shipowner was entitled to indemnity based on the stevedoring company's breach of its implied warranty of workmanlike service.

Prior to *Ryan* the Court had recognized that a stevedoring company could by contract expressly agree to indemnify the shipowner for any liability to longshoremen occasioned by the fault of the stevedoring company, *American Stevedores, Inc. v. Porello*, 330 U.S. 446 (1947). Where the contract did not deal expressly with indemnity such liability arose from the stevedoring company's obligation to perform its services in a workmanlike manner. The contractual obligation was described as a "warranty of workmanlike service that is comparable to a manufacturer's warranty of the soundness of its manufactured product." The warranty "is of the essence of . . . [the]

² Longshoremen's and Harbor Worker's Compensation Act § 5, 33 U.S.C.A. § 905.

stevedoring contract."³ In *Ryan* the obligation was to stow the cargo "properly and safely" and a breach of the obligation was a breach of the warranty of workmanlike service giving rise to a right in the shipowner of indemnity against the stevedoring company for money which the shipowner became liable to pay to a longshoreman on account of the breach.

Much judicial effort since *Ryan* has been concerned with defining the nature and scope of a stevedoring company's implied warranty of workmanlike service. But only one case, *Booth S.S. Co. v. Meier & Oelhaf Co.*, 262 F.2d 310 (2nd Cir. 1958), has decided that the warranty of workmanlike service includes elements of liability without fault. In the *Booth* case a contractor who undertook to repair a ship brought some unseaworthy equipment on board which caused injury to a workman and as a result the shipowner was liable for unseaworthiness. Indemnity was sought from the contractor, but the district court dismissed the third-party claim of the shipowner since there had been no proof that the contractor had been negligent in supplying the equipment. On appeal the parties agreed that neither of them had been negligent, and the court stated that the question was whether the contractor could be liable for indemnity where it had supplied defective equipment without fault. Recognizing that the question had not been decided before, the court, nevertheless, did not believe that the leading cases on indemnity excluded "the existence of liability without fault as an element of the warranty of workmanlike service in appropriate cases."⁴ After its discussion the court

³ 350 U.S. at 133-134.

⁴ 262 F.2d at 313. The court did not intimate what it meant by "appropriate cases".

stated:

"[We] hold that if the contractor undertook to do the work of repair of the vessel's engines, and if he supplied the equipment which failed in the course of the use for which it was supplied, then the failure constituted a breach of the contractor's warranty of workmanlike service and rendered him liable to indemnify the owner for damages paid to the contractor's employee on account of injuries resulting directly from the failure."

Appellant shipowner in the instant case urges us to follow the Second Circuit's *Booth* decision and therefore hold the stevedoring company liable for indemnity for bringing onto the ship a defective rope even though the stevedoring company was not negligent in any way. Appellee stevedoring company argues that some negligence of the stevedoring company is required to constitute a breach of its implied warranty of workmanlike service. Appellee would also have us distinguish *Booth* from the instant case on the ground that *Booth* involved a repairman whereas this case involves a stevedoring company. We consider *Booth* to be indistinguishable from this case on the ground urged or any other. In the context of this case a repairman cannot be distinguished from a stevedoring company. Any distinction in kind is without legal significance. However, we find ourselves in disagreement with the result reached in *Booth* that non-negligent action can give rise to indemnity liability.*

* 262 F.2d at 314-315.

* The Court in *Booth* felt that it was not unreasonable to require the supplier of equipment to test and inspect the materials "the omission of which would not constitute negligence." (262 F.2d at 314.) However, what the court was articulating was a basis for

Thus, we refuse to follow the Second Circuit on the point here involved.

It is our belief that the term "warranty of workmanlike service" is not properly susceptible to an interpretation which makes an act done free of negligence and totally without fault the basis of a breach of the warranty. We think the word "workmanlike" means a "proper", "safe" and "non-negligent" manner of doing something. "Workmanlike" has been defined as "skillful" or "well done" and is said to be synonymous with "deft", "proficient" or "adept",⁷ all words which connote a standard of skill similar to that associated with the reasonable man test for negligence. Cases discussing the legal meaning of "workmanlike" are replete with words and phrases of similar import.⁸

We have scrutinized the leading Supreme Court cases in the field and have found in the Court's discussion terms the repeated use of which support a conclusion that "workmanlike" describes an ordinary standard of care in the performance of a service the breach of which standard is equivalent to negligence. Thus, in the *Ryan* case,

strict liability without fault and it would seem that discussion of a burden to make tests the omission of which would not be negligence is inappropriate for the reason that standards of conduct and of performance are irrelevant where strict liability is imposed. Strict liability doesn't depend on what one does or does not do according to any set standard of care. The court's discussion would seem, rather, to be no more than an attempt to state a justification for risk-shifting from one party to another.

⁷ Webster's New International Dictionary 2952 (2d ed. unabridged) ("workmanlike").

⁸ See cases cited in 18A Words & Phrases 22 ("Good and Workmanlike Job") and 45 Words & Phrases 520 ("Workmanlike manner") (permanent ed.).

supra, the Court stated that the stevedoring company's contractual obligation is to stow the cargo "with reasonable safety," "properly and safely", and "in a reasonably safe manner"; the liability of the stevedoring company arises from "improper" stowage and the "failure to stow . . . 'in a reasonably safe manner'"; "competency and safety of stowage are inescapable elements of the service undertaken"; the recovery of the shipowner on his contract may turn upon the "standard of the performance" of the stevedoring service; and the duty of the stevedoring company is to hold the shipowner harmless from "foreseeable damages."

In *Weyerhaeuser S.S. Co. v. Nacirema Operating Co.*, 355 U.S. 563 (1958), the Court held that it was error to take a case from the jury on the question of indemnity where there was evidence tending to establish negligence on the part of the stevedoring company even though the shipowner had been held liable to the longshoreman only on the basis of negligence and not for unseaworthiness of the vessel.⁹ In *Weyerhaeuser* much language from *Ryan* (which is set out above) was utilized, and the Court mentioned that the contractual obligation is to perform duties "with reasonable safety"; the stevedoring company is liable if in using ship's gear it renders a "sub-standard performance."

Statements similar to those in *Ryan* and *Weyerhaeuser* appear in the three later cases where the Supreme

⁹ The court recognized that at some point activity on the part of the shipowner would preclude its recovery of indemnity from the stevedoring company even though the stevedoring company might also be negligent in some respect. 355 U.S. at 567-568.

Court has had occasion to discuss the *Ryan* case and liability for indemnity. *Atlantic & Gulf Stevedores, Inc. v. Ellerman Lines, Ltd.*, 369 U.S. 355 (1962); *Waterman S.S. Corp. v. Dugan & McNamara, Inc.*, 364 U.S. 421 (1960); *Crumady v. The Joachim Hendrik Fisser*, 358 U.S. 423 (1959).

We are not unmindful that negligence liability and warranty liability are not identical. Negligence is a liability in tort while warranty is generally associated with contract liability.¹⁰ Nevertheless, as indicated by the Supreme Court in *Ryan* the recovery of the shipowner in warranty still may turn upon a standard of perform-

¹⁰ In recent history liability for breach of warranty has been associated with contract more than anything else. See Harper & James, *Torts* § 28.16 (1956) and Prosser, *Torts* § 84 (2d ed. 1955). But there is support for the proposition that warranty was originally a tort liability. Prosser, *Torts* 507 (2d ed. 1955). Increasingly, warranty is becoming a liability apart from tort perhaps because much of it does not necessarily depend on fault or the adherence to a standard of care; and warranty is drifting away from contract probably because many who are entitled to a recovery in warranty have no contractual relationship with the person from whom they seek to recover. Concepts of privity of contract are ever more gradually giving way to sweeping coverage of warranty. See Prosser, *The Assault Upon the Citadel (Strict Liability to the Consumer)*, 69 Yale L.J. 1099 (1960). While the precise nature of warranty may in general be disputable, it is clear that the warranty of workmanlike service of a stevedoring company arises from contract. Of late, however, the importance of a contract between stevedoring company and shipowner (or ship in the case of a libel *in rem*) has been undermined; its presence is no longer a necessary condition to an indemnity based upon an implied warranty of workmanlike service. *Waterman S.S. Corp. v. Dugan & McNamara, Inc.*, 364 U.S. 421 (1960); *Crumady v. The Joachim Hendrik Fisser*, 358 U.S. 423 (1959). In *Waterman* and *Crumady* the shipowner was allowed to recover for breach of warranty even though there was no direct contract relationship between him and the stevedoring company. However, the contract idea was adhered to since the ship or shipowner were considered to be the third-party beneficiaries of the contract between the stevedoring company and the one who contracted for its services.

ance of the stevedoring service. We believe that in the stevedoring cases the standard of performance is the same whether the ultimate liability be in tort (for negligence) or in contract (for breach of warranty).

Our belief is not altered by the mere fact that there can be no liability of the stevedoring company in tort. In these indemnity cases there is no liability in tort, not because the standard would be different from that of warranty, but rather, because prior to *Ryan* the Supreme Court had decided that there could be no contribution, based on comparative fault, between shipowner and stevedoring company in respect of seamen's injuries on the ground that there had been no contribution in the common law between joint tortfeasors. *Halcyon Lines v. Haenn Ship Ceiling & Refitting Corp.*, 342 U.S. 282 (1952).¹¹ The entire liability in tort (including liability for unseaworthiness) would rest upon the shipowner since a longshoreman's right to workmen's compensation under the Longshoremen's and Harbor Workers' Compensation Act is his exclusive remedy against the wrongdoing of his employer, the stevedoring company.¹² This latter legislative reality when juxtaposed on the rule of the *Halcyon* case, *supra*, precluded any possibility of liability of the stevedoring company in tort. If the ship-

¹¹ In *Halcyon* a shipowner was sued by a longshoreman and the shipowner pleaded the employer stevedoring company. A jury determined that the shipowner had been 25% responsible for the longshoreman's injuries and that the stevedoring company had been 75% responsible. The district court equally divided the damages analogizing to collision cases. The Supreme Court held that there could be no contribution which lead to the result that shipowner who was only 25% responsible was liable for the whole while the 75% responsible stevedoring company was not liable at all.

¹² See note 2 *supra*.

owner was to be relieved at all from the onerous burden of *Halcyon*, liability against the stevedoring company for its wrongs would necessarily have to be predicated upon contract and not tort.¹³ This background to *Ryan* cannot be separated from an analysis of the liability of the stevedoring company for breach of the implied warranty of workmanlike service. And when this background is kept in mind it seems reasonable to posit that the warranty of workmanlike service was intended only to impose liability in contract similar to that which would otherwise have been imposed in tort (for being negligent in the performance of stevedoring services)—not that the one (warranty) is the substitute for the other (tort) but that the standard of performance in each case is the same.

The efforts of the shipowner in this case to hold the stevedoring company for action done without fault is an attempt to impose upon the stevedoring company the same degree of liability for unseaworthiness as that which is imposed upon the shipowner. We see no reason in policy or otherwise why the stevedoring company should be liable for unseaworthiness insofar as that doctrine encompasses liability without fault.¹⁴ Liability of the ship-

¹³ See Gilmore & Black, *Admiralty* 366-374 (1957).

¹⁴ Whether a particular set of facts gives rise to an action for negligence alone, for unseaworthiness alone or for both negligence and unseaworthiness is often an extremely difficult question. It has become quite evident that there is a very minute area, if any, which is negligence but not at the same time unseaworthiness. The continued existence of such an area is largely theoretical. The unseaworthy whale has all but swallowed the negligent Jonah. See generally Gilmore & Black, *Admiralty* § 6-34-6-44 (1957) and Tetreault, *Seamen, Seaworthiness and the Rights of Harbor Workers*, 39 Cornell L.Q. 381 (1954).

owner for unseaworthiness arises where the ship's gear is not reasonably fit for the purpose for which it is intended. *Mitchell v. Trawler Racer, Inc.*, 362 U.S. 539 (1960). The liability extends to longshoremen and other workmen who are injured while performing duties traditionally done by members of the ship's crew. *Seas Shipping Co. v. Sieracki*, 328 U.S. 85 (1946); *Pope & Talbot, Inc. v. Hawn*, 346 U.S. 406 (1953). And liability is imposed upon the shipowner even where the equipment which causes injury to a longshoreman is brought onto the ship by his employer, the stevedoring company. *Alaska S.S. Co. v. Petterson*, 347 U.S. 396 (1954). Just as the longshoreman is entitled to the warranty of seaworthiness while performing duties traditionally done by the ship's crew, the liability imposed with respect to equipment brought on board by the stevedoring company or other contractor would seem to rest upon the similar proposition that the gear was traditionally that which belonged to the ship. But the liability for unseaworthiness is the shipowner's not the stevedoring company's. The liability is absolute and non-delegable. *Mitchell v. Trawler Racer, Inc.*, *supra*; *Seas Shipping Co. v. Sieracki*, *supra*; *Mahnich v. Southern S.S. Co.*, 321 U.S. 96 (1944).

The Supreme Court has recognized that the respective duties of the stevedoring company and the shipowner to the longshoreman rest upon different principles than do their liabilities with respect to each other.¹⁵ In

¹⁵ See *Weyerhaeuser S. S. Co. v. Nacirema Operating Co.*, 355 U.S. 563, 568 (1958) and *Ryan Stevedoring Co. v. Pan-Atlantic S.S. Corp.*, 350 U.S. 124, 134 (1956).

view of this factor there would seem to be no necessary reason why a shipowner could not be liable without the stevedoring company always being liable at the same time to the shipowner. The shipowner is liable to the longshoreman for negligence and unseaworthiness and the stevedoring company is liable to the longshoreman for workmen's compensation, but this is not to say that as between the two the stevedoring company is liable to the same extent and upon the same basis as the shipowner. The stevedoring company's liability arises only from its contractual arrangement with the shipowner.¹⁶

We believe the stevedoring company's warranty of workmanlike service is only breached (giving rise to indemnity) where it has rendered a substandard, negligent performance. Such negligence on the part of the stevedoring company can of course give rise to unseaworthiness liability of the shipowner and in that situation there would be indemnity.¹⁷ But we believe indemnity liability cannot arise from non-negligent actions done entirely without fault. The liability of the shipowner to the longshoreman for unseaworthiness arises from a policy to protect the longshoreman at the expense of the shipowner who presumably is better able to shoulder the risk of loss. No doubt this policy in part received impetus from the historical dogma that seamen are the wards of the admiralty court. But the stevedoring company is not liable for unseaworthiness, and we can see no policy

¹⁶ But see note 10 *supra* in connection with *Waterman S.S. Corp. v. Dugan & McNamara, Inc.*, 364 U.S. 421 (1960) and *Crumady v. The Joachim Hendrik Fisser*, 358 U.S. 423 (1959).

¹⁷ E.g., *Crumady v. The Joachim Hendrik Fisser*, *supra* note 16.

comparable to that which gives rise to the shipowner's liability which would compel an indemnity in favor of the shipowner where the stevedoring company has not been negligent.

We do not believe the Supreme Court's characterization of the warranty of workmanlike service as being "comparable to a manufacturer's warranty of the soundness of its manufactured product"¹⁸ precludes the result reached in this case. It must be recognized that the warranty of workmanlike service is in some sense different from the manufacturer's warranty in that the former involves the performance of a service—unloading of vessels—while the latter attaches to a product that is made. Moreover, although some warranties result in strict liability of the manufacturer, certainly not all of them do.¹⁹ We think a fair interpretation of all the language used in the leading cases (and the results reached in the plethora of other cases) is that the stevedoring companies are not liable for breach of the warranty of workmanlike service in the absence of some negligence.

We realize that stevedoring companies and shipowners enjoy considerable freedom of contract with respect to liability for indemnity, and we have no doubt that agreements could be made to cover expressly the action which we have said does not come within the implied warranty of workmanlike service. *American Stevedores, Inc. v. Porello*, 330 U.S. 446 (1947).

¹⁸ *Ryan Stevedoring Co. v. Pan Atlantic S.S. Corp.*, 350 U.S. 124, 133-34 (1956).

¹⁹ See generally Prosser, *The Assault Upon the Citadel (Strict Liability to the Consumer)*, 69 Yale L.J. 1099 (1960).

In view of our decision that the warranty of workmanlike service could not have been breached without some negligence on the part of the stevedoring company (i.e., that there was no implied warranty covering liability without fault), we find it unnecessary to decide whether the district court was correct in holding that the presence of the express contract clause indemnifying for negligence precluded any implied warranty.

Judgment affirmed.

JERTBERG: Circuit Judge (dissenting)

I respectfully dissent. I do so only because of my view that the opinion of my brethren reaches a wrong result in an important and unsettled area of Admiralty law and one which will have far-reaching consequences.

The majority members of the panel conclude that the warranty of workmanlike service could not have been breached without some negligence on the part of the Stevedoring Company and found it unnecessary to decide whether the district court was correct in holding that the express contract clause indemnifying for negligence precluded any implied warranty.

Since I believe that the district court's dismissal of appellee's libel should be set aside and the cause remanded to the district court with instructions to enter judgment in its favor against appellee for the amount of the indemnity sought, it becomes necessary for me to first consider the issue not passed upon in the majority opinion.

The Seattle hatch tent and tent tie-down rope involved were owned, supplied, rigged and exclusively con-

trolled by appellee. The rope in question was permanently spliced to an eye in the tent. At the time of the accident, Griffith and his work partner had passed the rope through a deck fixture and back up and through the splice by which the rope was permanently attached to the tent. Griffith was pulling on the free end of the rope when it broke. It broke between the point where Griffith was holding it and the point where it ran through the splice. The securing of the tent and the manner in which the tent and tent rope were being secured were entirely and exclusively within the supervision and control of appellee. When the rope broke it was being used for the purpose and in the manner for which it was supplied by appellee for use by its employees. The rope was a proper type of rope for use as a tent rope and there was no evidence that it was in an unsatisfactory condition. When the rope broke it was defective and unsatisfactory for the purpose for which it was intended.

The provisions of the stevedoring contract existing between appellant and appellee which are relevant and pertinent on this appeal provide:

"(a) That the Stevedoring Company will act as stevedores, and that they will with all possible dispatch, load and/or discharge all cargoes of vessels owned, chartered, controlled, or managed by the Steamship Company at all Columbia and Willamette River ports as directed. And it is agreed that the Steamship Company will grant to the said Stevedoring Company the exclusive rights of handling all such cargoes as before mentioned under the terms of this agreement, and will pay for the work done by the Stevedoring Company in lawful money of the United States at the rates set forth in Schedule 'A', attached hereto and made a part hereof;

"(b) That the Stevedoring Company will furnish all necessary labor and supervision and all ordinary gear for the performance of the services described in this contract, including winch drivers and usual appliances used for stevedoring;

"(c) That the Steamship Company will furnish suitable booms, winches, blocks, and falls, steam and/or power and lights and will maintain the same in safe and efficient working conditions during the progress of the work; and

"(d) That the Stevedoring Company will be responsible for damage to the ship and its equipment, and for damage to cargo or loss of cargo overside, and for injury to or death of any person caused by its negligence * * *. The Steamship Company shall be responsible for injury to or death of any person or for any damage to or loss of property arising through the negligence of the Steamship Company or any of its agents or employees, or by reason of the failure of ship's gear and/or equipment."

I shall first consider appellee's contention that appellant's right to indemnity must be determined from the provisions of the written stevedoring contract. Appellee argues that since the contract provides that appellee shall be responsible "for injury to or death of any person caused by its negligence" and since the district court found that appellee was not negligent in furnishing the defective rope, the decree of the district court dismissing appellant's libel must be affirmed.

The district court found that "there is no evidence, outside of the written contract itself, as to the intent of the parties with respect to construction or interpretation of the stevedoring contract, or with respect to implied obligations under said contract." Thus, there is presented

as a question of law whether under the contract the liability of appellee is limited to negligence and thereby negatives the existence of any obligation on the part of appellee to perform the stevedoring services in a workmanlike manner.

Was appellee under an obligation to render workmanlike service to appellant under the terms of the contract? It is to be noted that appellee agreed to act as stevedore and to load and discharge all cargoes of vessels owned, controlled, or managed by appellee at Columbia and Willamette River ports as directed. It is also to be noted that the contract does not contain an express agreement of indemnity unless the last quoted provision of the contract, properly construed, limits the liability of appellee to its negligence and bars indemnity.

Since the decision of the Supreme Court in *Ryan Stevedoring Co., Inc. v. Pan-Atlantic Steamship Corp.*, 350 U.S. 124 (1956), absent an express agreement of indemnity, it has been settled law that an agreement between a shipowner and a stevedore to perform loading and discharging of cargo includes the implied-in-fact obligation to render workmanlike service. In *Ryan*, a stevedoring company agreed to perform stevedoring services for the shipowner. The agreement was evidenced by letters, but without a formal stevedoring contract or an express indemnity agreement. One of the members of the stevedoring company was injured during the unloading. A jury returned a verdict for the longshoreman against the shipowner. The shipowner had impleaded the stevedoring company claiming that it was entitled to full in-

demnity because the stevedoring company had negligently failed to stow the cargo in a safe and proper manner which negligence caused the shipowner to be liable to the longshoreman. The Court held that the shipowner was entitled to indemnity based on the stevedoring company's breach of its implied warranty of workmanlike service. In the course of its opinion, the Court stated, at p. 133:

"The shipowner here holds petitioner's uncontroverted agreement to perform all of the shipowner's stevedoring operations at the time and place where the cargo in question was loaded. That agreement necessarily includes petitioner's obligation not only to stow the pulp rolls, but to stow them properly and safely. Competency and safety of stowage are inescapable elements of the service undertaken."

In *Weyerhaeuser S.S. Co. v. Nacirema Co.*, 355 U.S. 563 (1958), the Supreme Court held that it was error to take a case from the jury on the question of indemnity where there was evidence tending to establish negligence on the part of the stevedoring company even though the shipowner had been held liable to the longshoreman only on the basis of negligence and not for unseaworthiness of the vessel. The stevedoring contract contained no express indemnity clause. The Supreme Court held that the stevedoring company's implied-in-fact contractual obligation to perform its duties with reasonable safety embraced not only the handling of cargo but the use by the stevedore of ship's gear. In the course of its opinion, the Court stated, at p. 567:

"We believe that respondent's [stevedoring company] contractual obligation to perform its duties with reasonable safety related not only to the han-

dling of cargo, as in *Ryan*, but also to the use of equipment incidental thereto, such as the winch shelter involved here."

The implied-in-fact obligation of the stevedore to render service in a workmanlike manner is not based upon tort. As stated by the Supreme Court in *Ryan*, *supra*, at p. 133:

"This obligation is not a quasi-contractual obligation implied in law or arising out of a noncontractual relationship. It is of the essence of petitioner's stevedoring contract. It is petitioner's warranty of workmanlike service that is comparable to a manufacturer's warranty of the soundness of its manufactured product. The shipowner's action is not changed from one for a breach of contract to one for a tort simply because recovery may turn upon the standard of the performance of petitioner's stevedoring service."

In *Crumady v. The J. H. Fisser*, 358 U.S. 423 (1959), the Supreme Court stated, at pp. 428-429:

"A majority of the Court ruled in *Ryan Co. v. Pan-Atlantic Corp.*, 350 U.S. 124, that where a shipowner and stevedoring company entered into a service agreement, the former was entitled to indemnification for all damages it sustained as a result of the stevedoring company's breach of its warranty of workmanlike service. And see *Weyerhaeuser S.S. Co. v. Nacirema Co.*, 355 U.S. 563. The facts here are different from those in the *Ryan* case, in that this vessel had been chartered by its owners to Ovido Compania Naviera S. A. Panama, which company entered into the service agreement with this stevedoring company. The contract, however, mentioned the name of the vessel on which the work was to be done and contained an agreement on the part of the stevedoring company 'to faithfully furnish such stevedoring services.'

"We think this case is governed by the principle announced in the *Ryan* case. The warranty which a stevedore owes when he goes aboard a vessel to perform services is plainly for the benefit of the vessel whether the vessel's owners are parties to the contract or not. That is enough to bring the vessel into the zone of modern law that recognizes rights in third-party beneficiaries. Restatement, Law of Contracts, § 133. Moreover, as we said in the *Ryan* case, 'competency and safety of stowage are inescapable elements of the service undertaken.' 350 U.S., at 133. They are part of the stevedore's 'warranty of workmanlike service that is comparable to a manufacturer's warranty of the soundness of its manufactured product.' *Id.*, at 133-134. See *MacPherson v. Buick Motor Co.*, 217 N. Y. 382, 111 N. E. 1050."

See also *Waterman Co. v. Dugan & McNamara*, 364 U.S. 421 (1960), wherein it was held that a stevedoring company was liable to the shipowner for indemnity even though there was no privity of contract between them and regardless of whether the injured longshoreman asserted his claim in an *in rem* or an *in personam* proceeding, since the stevedore's warranty of workmanlike service aboard the ship was for the benefit of the ship and its owner as well as the stevedore.

I am of the view that the provision of the stevedoring contract under which appellee agrees to be responsible "for injury to or death of any person caused by its negligence," which statement is simply an affirmation of an existing duty on the part of appellee, does not exclude from the stevedoring contract the implied-in-fact obligation to perform stevedoring services in a workmanlike manner, nor do I find any other provision of the contract or the contract as a whole to have any such effect. The

obligation of the stevedore to indemnify the shipowner rests not upon negligence but upon contract. The contract does not limit such obligation.

The final question is whether the implied-in-fact contractual obligation of appellee to render its services in a workmanlike manner embraces within its scope the duty to see that the equipment or gear required to be and furnished for the use of its own employees in the performance of its stevedoring services and exclusively used and controlled by them, must be seaworthy and fit for the use intended. Under the contract, appellee agreed to furnish not only all necessary labor and supervision but also "all ordinary gear for the performance of the services described in this contract, including winch drivers and usual appliances used for stevedoring." There is no contention in the record that the Seattle hatch and tent tie-down rope were not ordinary gear which appellee was obligated to furnish under the terms of the contract.

I have found no Supreme Court decision which has occasion to pass upon the duty of a stevedoring company vis-a-vis the shipowner in respect to gear or equipment required to be and furnished by it in the performance of stevedoring services. I recognize that liability has been imposed upon a shipowner for breach of the implied warranty of seaworthiness in favor of a longshoreman whose injuries were caused aboard ship by defective gear or equipment belonging to and brought on the ship by his employer—the stevedoring company. *Alaska Steamship Co., Inc. v. Petterson*, 347 U.S. 396 (1954). The right of the shipowner to recover indemnity from the stevedoring

company was not involved in that case. I have found no intimation in the many decisions of the Supreme Court which I have reviewed that a shipowner would be denied the right to indemnity against the stevedoring company in instances where liability has been imposed on the shipowner either for damages to person or property caused solely by defective equipment furnished by the stevedoring company and exclusively used, controlled, and supervised by it. To impose liability on the shipowner in favor of a longshoreman and to deny recovery over against the stevedoring company under such circumstances, is inequitable. Since the loss must be borne by either one or the other, it is not unfair that such loss be ultimately borne by the one best able to eliminate the hazard, to wit: the owner of the defective gear or equipment who supplied it and whose use and control over it was exclusive.

In my view, the Supreme Court decisions above cited do not exclude the existence of liability without fault as an element of the warranty of workmanlike service under the facts of this case.

In *Ryan, supra*, it is stated, at pp. 133-134:

"It is petitioner's [stevedore's] warranty of workmanlike service that is comparable to a manufacturer's warranty of the soundness of its manufactured product."

This statement was reaffirmed by the Supreme Court in *Waterman, supra*, and in *Crumady, supra*.

The only case passing upon this point to which attention has been directed is *Booth Steamship Co. v. Meier*.

● *Oelhaf Co.*, 262 F.2d 310 (2nd Cir. 1958). The majority opinion states that *Booth* is indistinguishable in any significant way from the instant case but disagrees with the result reached in the *Booth* case. In *Booth*, a contractor undertook to overhaul the engines on Booth's vessel. One of the first steps in the execution of the work was the extraction of tight fitting cylinder liners from the engine block, and this was undertaken by means of extracting equipment consisting essentially of a rigid bar, or strongback, which was attached to the liner, and a jack, which was used to raise the liner by raising the strongback. Because the lifting arm of the jack was relatively short, it was necessary periodically to suspend the strongback holding the liner from a wire strap while the jack itself was lifted up. It was while the strongback was so suspended that the strap parted, allowing the strongback to fall and sever the thumb of the plaintiff, who was engaged in elevating the jack itself for further lifting.

The shipowner was held liable to the injured workman of the contractor for unseaworthiness. The shipowner sought indemnity from the contractor, but the district court dismissed the third-party claim of the shipowner since there had been no proof that the contractor had been negligent in failing to discover the defect in the strap, which defect was latent and not discoverable on visual inspection.

In the course of its opinion, the court stated, at pp. 314-315:

"The implied warranty of suitability for a particular use made by manufacturers and retailers is generally considered absolute, however, and is not

avoided by the fact that in the exercise of ordinary care the defendant could not discover the injury-causing defect. See 1 Williston on Sales § 237 (Rev. Ed. 1948 and Supp. 1958). It has repeatedly been suggested that the liabilities of suppliers should be co-extensive with those of the law of sales. See 4 Williston on Contracts § 1041 (1936 Ed.); 2 Harper and James, *The Law of Torts*, § 28.19 (1956); Prosser on Torts 496 (2d Ed. 1955). In *Shamrock Towing Co. v. Fitcher Steel Corp.*, 2 Cir., 1946, 155 F.2d 69 we stated in dictum that the warranty of a supplier of marine equipment was as absolute as the maritime warranty of seaworthiness, see *The H. A. Scandrett*, 2 Cir., 1937, 87 F.2d 708; that it therefore made no difference whether a defect was discoverable; that as a result both warranties would be breached in the event that the chattel supplied proved inadequate to the purpose for which it was supplied under normal conditions of use. We see no reason to alter that opinion.

"Like the manufacturer or retailer the supplier profits from the bailment or lease of his equipment. Although he is unable to prevent defects arising in the course of manufacture, his expert knowledge of the characteristics of the equipment in use should enable him to detect them more readily than the user. It is therefore not less reasonable as an incident of his contract to charge him with the duty of making tests, the omission of which would not constitute negligence, than it is to charge the manufacturer or retailer with a similar responsibility. We think that this is particularly true when the chattel is supplied, as it presumably was here, in the partial fulfillment of a general undertaking to make repairs. In such circumstances the hirer defers to the special qualifications of the contractor in both the selection and use of the equipment. Relying on the supplier's control of the work and with confidence in the supplier's expert knowledge and competence, he makes at most only a routine inspection of the equipment employed.

To say that the supplier warrants the equipment merely confirms the customary reliance which flows from such a relationship and which affords an appropriate remedy.

"Applying general principles to the facts of this case, we find that the defect which caused the plaintiff's injury was not detectable by the ordinary visual inspection which the vessel's officers on the scene may be expected to make. Such latent defects in wire as are undetectable on visual inspection may result from improper manufacture or from fatigue resulting from use over a period of time. They may perhaps be discovered by subjecting the equipment to appropriate tests with safety factors in excess of the contemplated undertaking. Furthermore, it is the supplier and not the ship owner who knows the actual history of prior use of the equipment. He alone is in the position to establish such retirement schedules or periodic retests as will best prevent the development of visually undetectable flaws.

"Accordingly we hold that if the contractor undertook to do the work of repair of the vessel's engines, and if he supplied the equipment which failed in the course of the use for which it was supplied, then the failure constituted a breach of the contractor's implied warranty of workmanlike service and rendered him liable to indemnify the owner for damages paid to the contractor's employee on account of injuries resulting directly from the failure."

I find no significant fact which distinguishes the *Booth* case from the instant case. Much that is said in *Booth* can be applied with equal force to this case. I see no policy considerations in Maritime law, and no injustice in requiring a stevedore to indemnify a shipowner from a liability visited upon the shipowner solely through failure on the part of the stevedore to furnish, in connection with

the performance of a stevedoring contract, equipment that is fit for the use intended.

It is to be noted that the case presented to us is that of the shipowner vis-a-vis the stevedoring company. We are not concerned with the injured longshoreman who has received compensation for his injuries, nor policy considerations which have led to a tender solicitude on the part of the Admiralty Court for injured seamen and longshoremen. The contest here is between equals and no thought should be given to which of them is more able to bear the burden.

I would set aside the decree of the district court dismissing appellee's libel and would remand the cause to the district court with instructions to enter judgment in its favor against appellee for the amount of the indemnity sought.

(Endorsed) Opinion and Dissenting Opinion Filed
Oct. 25, 1962.

Frank H. Schmid, Clerk

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT.**

"Docketed"

**ITALIA SOCIETA PER AZIONI
DI NAVIGAZIONE,**

Appellant,

vs.

**OREGON STEVEDORING COM-
PANY, INC.**

Appellee

No. 17,616

JUDGMENT

APPEAL from the United States District Court for the District of Oregon.

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the District of Oregon and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed, with costs in favor of the appellee and against the appellant.

It is further ordered and adjudged by this court that the appellee recover against the appellant for its costs herein expended, and have execution therefor.

Filed and entered October 25, 1962: